

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EUR-25 IO-14 ISO-00 EB-11 STR-08 SSO-00 NSCE-00

USIE-00 INRE-00 AGR-20 CEA-02 CIAE-00 COME-00 DODE-00

FRB-02 H-03 INR-10 INT-08 L-03 LAB-06 NSAE-00 NSC-07

PA-04 RSC-01 AID-20 CIEP-02 SS-20 TAR-02 PRS-01 SP-03

FEA-02 OMB-01 SWF-02 OIC-04 /182 R

DRAFTED BY TREAS:GC:DHSTOUGHTON

APPROVED BY EB/IFD/OMA:JKRIZAY

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TREAS:RPATRICK

TREAS:WBARREDA

STR:JJACKSON

STR:TGRAHAM

STATE:TMINNIES

STATE:RMEIMA

STATE:TDEAL

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O R 041529Z APR 74

FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

INFO USMISSION EC BRUSSELS

USMISSION OECD PARIS

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E.O. : 11652

TAGS : EFIN

SUBJECT: GATT PANELS ON DISC AND OTHER TAX PRACTICES

REF : A. GENEVA 1660; B. GENEVA 2000

1. YOU MAY AT YOUR DISCRETION INFORM GATT SECRETARIAT THAT
FALCONER IS ACCEPTABLE TO U.S. AS A GATT EXPERT MEMBER OF
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PANELS.

2. IN ORDER TO ALLAY CONCERNS OF EC (REFS. A AND B) REQUEST YOU INFORM EC THAT WE ARE WORKING ACTIVELY ON SELECTION OF TAX EXPERT NOMINEES FOR PANELS. WE ARE MAKING AN EFFORT TO DETERMINE THE AVAILABILITY OF PEOPLE BEFORE SUGGESTING NAMES RATHER THAN PROPOSING EXPERTS WHO MIGHT NOT BE ABLE TO ACCEPT POSITIONS ON PANELS. THE PROCESS OF ASCERTAINING AVAILABILITY OF QUALIFIED CANDIDATES TAKES TIME. WE WONDER WHETHER EC HAS CHECKED THE AVAILABILITY OF LOCKER, VOGEL AND PARRY.

3. IN TAKING ACTION SPECIFIED IN PARAGRAPH 4, THE MISSION MAY CONVEY TO THE EXTENT APPROPRIATE TO GATT SECRETARIAT AND EC THE INFORMATION CONTAINED IN THE FOLLOWING COMMENTARY. WE HAVE REQUESTED THE IMF TO PERMIT A MEMBER OF ITS STAFF TO SERVE AS A TAX EXPERT ON PANELS. WE HAVE INDICATED OUR INTEREST IN THREE IMF STAFF MEMBERS: RICHARD BYRD, LIEF MUTEN AND RICHARD GOODE. IN ADDITION, WE HAVE

APPROACHED JOHN HACKETT OF THE OECD SECRETARIAT TO INQUIRE AS TO HIS AVAILABILITY TO SERVE AS TAX EXPERT MEMBER OF PANELS. THE WORK OF THE PANELS WILL INVOLVE AN IMPORTANT APPLICATION OF THE SUBSIDIES PROVISIONS OF ARTICLE XVI OF THE GENERAL AGREEMENT TO THE U.S. DISC LEGISLATION AND TO THE TAX PRACTICES OF THE EC NATIONS INVOLVED. WE BELIEVE IMF AND OECD PARTICIPATION WOULD ENHANCE THE EFFECTIVENESS OF THE PANELS IN CARRYING OUT THIS IMPORTANT WORK. THE IMF HAS NOT YET RESPONDED TO OUR REQUEST. HACKETT HAS INFORMED US PRIVATELY THAT HE FEELS IT WOULD BE INAPPROPRIATE FOR OECD STAFF MEMBER TO SERVE ON PANELS SINCE HE MOST LIKELY WOULD BE REQUIRED TO RULE FOR OR AGAINST AN OECD MEMBER COUNTRY. IN ADDITION, HACKETT HAS INDICATED THAT THE CURRENT WORKLOAD OF THE OECD STAFF WOULD NOT ALLOW HIM TO TAKE ON THE ADDITIONAL DUTIES AS A TAX EXPERT MEMBER OF PANELS. WE QUESTION WHETHER IT WOULD BE INAPPROPRIATE FOR OECD STAFF MEMBER TO PARTICIPATE ON PANELS. WE BELIEVE HACKETT POSSESSES THE PROPER TAX EXPERTISE AND OBJECTIVITY TO ANALYZE THE VARIOUS TAX ISSUES INVOLVED IN THE FOUR COMPLAINTS. WE FEEL HIS PARTICIPATION AS AN OECD STAFF MEMBER WOULD MAKE A MAJOR LIMITED OFFICIAL USE

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CONTRIBUTION TO THE WORKABILITY OF THE PANEL SYSTEM OF ARTICLE XXIII OF THE GENERAL AGREEMENT AND ALLOW IT TO SERVE AS AN EFFECTIVE MECHANISM FOR SETTling QUESTIONS INVOLVING THE INTERPRETATION OF TRADE RULES. REGARDING THE SECOND OBJECTION, HACKETT MAY BE MORE WILLING TO AGREE TO PARTICIPATE ON PANELS IF BOTH EC AND US REQUEST HIS SERVICES. WE BELIEVE THAT THIS HOLDS TRUE WITH RESPECT TO IMF PARTICIPATION ON PANELS ALSO. THEREFORE,

IF EC FINDS ANY OF THE OECD AND IMF STAFF MEMBERS WE HAVE SUGGESTED ACCEPTABLE AS TAX EXPERT MEMBERS OF PANELS, WE URGE THE EC TO SUPPORT OUR EFFORTS TO OBTAIN IMF AND OECD AGREEMENT TO ALLOW THEM TO PARTICIPATE ON PANELS.

4. ACTION REQUESTED:

(A) AT YOUR DISCRETION YOU MAY INFORM GATT SECRETARIAT THAT FALCONER IS ACCEPTABLE TO U.S. TO SERVE AS GATT EXPERT MEMBER OF PANELS.

(B) INFORM EC THAT WE ARE WORKING ACTIVELY ON SELECTION OF TAX EXPERT NOMINEES FOR PANELS AND ARE DETERMINING AVAILABILITY OF INDIVIDUALS BEFORE NOMINATING THEM.

(C) ASK THE EC WHETHER IT HAS DETERMINED THE AVAILABILITY OF LOCKER, VOGEL AND PARRY.

(D) EXPLAIN TO EC OUR DESIRE TO HAVE HACKETT OF OECD, AND

BYRD, MUTEN AND GOODE OF IMF SERVE AS TAX EXPERTS ON PANELS

(E) ASK THE EC IF IT COULD ACCEPT THOSE INDIVIDUALS LISTED IN FOREGOING ITEM SINGLY OR IN COMBINATION.

(F) IF THEY ARE ACCEPTABLE TO THE EC PLEASE ASK THE EC IF IT CAN JOIN WITH US IN MAKING APPROPRIATE APPROACHES IN OECD AND IMF TO OBTAIN THEIR PARTICIPATION.

(G) MISSION IS REQUESTED TO ADVISE SOONEST AS TO WHEN THE EC WILL BE ABLE TO RESPOND TO THE POINTS RAISED IN FOREGOING ITEMS (E) AND (F). RUSH

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